

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ALIRIO HERNANDEZ
SAMAYOA,

Defendant.

4:18-CR-3125

ORDER

The defendant filed a motion to appoint counsel ([filing 176](#)) seeking the assistance of counsel to help him with an issue relating to the calculation of his sentence as affected by the First Step Act of 2018, [Pub. L. No. 115-391](#), 132 Stat. 5194 (2018). The Court will deny the motion.

It is unclear why the defendant believes his release date is being calculated incorrectly. *See* [filing 176 at 5](#).¹ The Court is optimistic that regulatory changes for the Bureau of Prisons have since been implemented, fixing any errors. *See* [28 C.F.R. § 523.40 et seq.](#) The records available to the Court suggest that the defendant is to be released soon.

But regardless, any complaint about how the defendant's sentence is being computed needs to be brought elsewhere: It must first be presented to the Bureau of Prisons, *see* [United States v. Pardue](#), 363 F.3d 695, 699 (8th Cir.

¹ The defendant seems to have gotten his "release date with the First Step Act is 1/20/2024" from the date he would be eligible for release to a halfway house as an "elderly offender." [Filing 176 at 5](#), 8. That program was created by § 603 of the First Step Act. *See id.* But the defendant wouldn't be an elderly offender. *See* [filing 114 at 2](#).

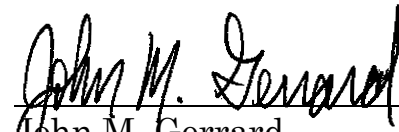
2004), and then in a habeas corpus action under 28 U.S.C. § 2241 in the district of incarceration, see *Matheny v. Morrison*, 307 F.3d 709, 711-12 (8th Cir. 2002).

In other words, if the defendant still believes his sentence is being calculated incorrectly, his remedy is to administratively exhaust his claim and then bring it in the district where's he's in prison—which appears, right now, to be the District of New Jersey, where FCI Fort Dix is located. If counsel is to be appointed, it should be there, by that court.

IT IS ORDERED that the defendant's motion to appoint counsel (filing 176) is denied without prejudice to reassertion in the U.S. District Court for the District of New Jersey.

Dated this 11th day of July, 2024.

BY THE COURT:



John M. Gerrard
Senior United States District Judge